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12 *Counsel for Defendant*
13 *Serge Obukhoff*

14
15 **UNITED STATES DISTRICT COURT,**
16 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DISTRICT**
17

18 UNITED STATES OF
19 AMERICA,
20
21 Plaintiff,

22 v.

23 SERGE OBUKHOFF,
24
25 Defendant.

Case No.: 8:18-cr-00140-JLS

26 **DEFENDANT'S MOTION IN LIMINE**
27 **NUMBER TWO**

28 Before the Honorable Josephine L. Staton
United States District Judge

Date: August 2, 2021
Time: 9:00 a.m.

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**TO THE CLERK OF COURT, AND THE UNITED STATES ATTORNEY
FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE, on August 2, 2021, at 9:00 a.m., defendant Serge Obukhoff will move the Court for orders consistent with his Motion in Limine Two, which is set forth below.

Dated: August 1, 2021

Respectfully submitted,

/s/ Michael H. Artan

Michael H. Artan
*Counsel for Defendant
Serge Obukhoff*

Dated: August 1, 2021

/s/ Glen T. Jonas

Glen T. Jonas
*Counsel for Defendant
Serge Obukhoff*

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION IN LIMINE NUMBER TWO

I. INTRODUCTION.

During opening statement, defense counsel quoted the prosecutor Joseph McNally's statement to the court, from the record on January 11, 2019, wherein it was argued that MICHAEL DROBOT breached his plea agreement with the government.

MICHAEL DROBOT is the leader and engineer of arguably the largest healthcare fraud in United States history that went on for 15 years and raked in a half billion dollars.

In attempting to persuade this Court that MICHAEL DROBOT could not be trusted at the breach of agreement hearing, prosecutor McNally made the following statement:

"Mr. Drobot has proven himself of (SIC) somebody who in my view is beyond redemption, somebody who even after being sentenced continues to deceive, continues to trick in order to advance his own agenda."

This statement was quoted by defense counsel at the current trial in the opening statement without objection. The prosecutor two days later verbally argued that his statements are inadmissible.

This argument is categorically false pursuant to the rules of evidence. It is admissible as a statement of a party opponent F.R.E. 801(d)(2)(A). As such, it is directly admissible and can be read into the record during cross examination without first establishing the witness's state of mind.

Additionally, as reflected in the minute order for the proceeding (Docket No. 265), the MICHAEL DROBOT was present. One would expect that Mr. Drobot

1 was keenly listening to the prosecutor's every word since ultimately, he was at risk
2 of being charged with additional crimes. He was in fact found in breach, charged,
3 pled and now faces a maximum exposure of 50 years in prison.

4 The same prosecutor that said DROBOT is beyond redemption, among other
5 things, is now in charge of his future, deciding in his sole discretion (along with the
6 prosecution team) whether to recommend another sentencing reduction at the
7 pending sentencing for DROBOT. This is an extremely strong motive to lie.

8 More importantly, a government prosecutor is not free to argue inconsistent
9 positions to bamboozle a jury. It is expected that the prosecutor meant what he
10 said to this Court sincerely. Hence in a credibility contest between DROBOT and
11 OBUKHOFF, the prosecutor's statement is highly relevant.

12 MICHAEL DROBOT and SERGE OBUKHOFF's version of events are in
13 conflict on the most important issues regarding what was said to the defendant as it
14 relates to his criminal intent. The only other witness to those private conversations
15 is deceased attorney Michael Tichon.

16 Thus, we have the word of the defendant versus the word of a master
17 manipulating con-artist felon who continues to trick and deceive. This goes to the
18 very heart of the defense.

19 The goal of a trial is to reach the truth: the truth is that DROBOT is
20 extremely manipulative and prone to tricking and deceiving people. The evidence
21 is highly relevant and admissible.

22 23 **II. A GOVERNMENT PROSECUTOR IS A PARTY OPPONENT** 24 **FOR THE PURPOSE OF F.R.E. 801(D)(2)(A)** 25

26 In United States v. Bakshnian, 65 F.2d 1104 (U.S.D.C, Central Dist. CA,
27 1999) the defendant sought to admit at trial the statement of the prosecutor from a
28 closing argument at the co-defendant's severed trial.

1 First, the Court ruled that the admission of a party opponent rule is applied
2 to statements by a government prosecutor. *Id.* at 1106. (Citing *United States v.*
3 *Salerno*, 937 F.2d 797 (2d Cir. 1991) (statement of government prosecutor);
4 *Kattar*, 840 F.2d 933; *Morgan* 189 U.S. App. D.C. 155, 581 F.2d 933, see also,
5 *United States v. Warren*, 310 U.S. App. D.C. 1, 42 F.3d 647, 655 (D.C. Cir. 1994)
6 (statement of government agent); *United States v. Deloach*, 34 F.3d 1001, 1005
7 (11th Cir. 1994).)

8 Second, the Court ruled that the government is forbidden from taking
9 inconsistent positions in proceedings. In ruling, the court stated, "...between one
10 trial and another, the government may not take inconsistent positions as to what
11 occurred." *Id.* at 1108.

12 Third, the court ruled that "no guarantee of trustworthiness is required in the
13 case of an admission." *Id.* at 1109.

14 Fourth, the Court rejected the "McKeon" *U.S. v. McKeon*, 738 F.2d 26 (2d
15 Cir. 1984) analysis because it is largely inapplicable to admissions of a prosecutor
16 as opposed to a defendant's attorney which may infringe on "vigorous and
17 legitimate advocacy." *Id.* at 1108.

18 The prosecutor's statement that his star witness DROBOT is subject to
19 engaging in deceit, trickery and can't seem to stop lying is directly relevant to
20 DROBOT's credibility. Since there will ultimately be a credibility contest
21 between the defendant and DROBOT, excluding this evidence would severely
22 prejudice the defendant and be a disservice to the jury's job of assessing the facts.

23 Defense counsel is not required to establish DROBOT's state of mind to
24 establish admissibility. The statement is directly admissible as a party opponent
25 admission.
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2 Dated: August 1, 2021

Respectfully submitted,
/s/ Michael H. Artan

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Michael H. Artan
Counsel for Defendant
Serge Obukhoff

Dated: August 1, 2021

/s/ Glen T. Jonas

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